COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

Monday, December 15, 1997

DIVISION TWO

A073409--In re N'Kosi R., a Person Coming Under the Juvenile Court Law.

A073604--In re Isaac W., a Person Coming Under the Juvenile Court Law.

A074266--In re Donald S., a Person Coming Under the Juvenile Court Law.

The trial court shall review the dispositional order issued February 2, 1996, and the order issued May 3, 1996, committing Donald to the California Youth Authority, and amend such orders to correct any inadvertent typographical or clerical errors. In all other respects, the judgment of the trial court is affirmed. Ruvolo, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

DIVISION THREE

A076774--System 99 Minority Shareholders v. Viking Freight System, Inc.

By The Court: The petition for rehearing is denied. Phelan, P.J.

Monday, December 15, 1997 (continued)

A080269--Frank G. v. The Superior Court of the City and County of San Francisco, San Francisco Department of Human Services, R.P.I.

The petition for extraordinary writ relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis* v. *Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd.* v. *Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for December 17, 1997. Therefore, our decision is final in this court immediately. Corrigan, Act. P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

DIVISION FOUR

A071076--Francis Bise et al. v. Rhone-Poulenc, Inc. et al. A075001--Tony Abadie et al. v. Shell Oil Company et al.

We affirm the judgments in their entirety. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

DIVISION FIVE

A076764--The People v. Ronald Dean Davis.

The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J. (Not for Publication.)

A076951--The People v. Derrick Glenn Howard.

The judgment is affirmed. Jones, J. We concur: Peterson, P.J., Haning, J. (Not for Publication.)

A077052--Louise Fong, Individually as Administratrix, etc. v. American Honda Motor Company Inc., et al.

The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J. (Not for Publication.)

Monday, December 15, 1997 (continued)

A077380--M&M Luxury Shuttle, Inc. v. Division of Labor Standards Enforcement.

The judgment is affirmed. Jones, J. We concur: Peterson, P.J., Haning, J. (Not for Publication.)

A077798--The People v. Vincent Bradley Paulk.

The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J. (Not for Publication.)

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

Tuesday, December 16, 1997

DIVISION ONE

A074865--Viking Credit Corp. v. American Coin Laundries, Inc., et al.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Dossee, J. (Not for Publication.)

A076253--Nabil Athanassious v. California Dept. of Corrections.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A076350--Mehta & Company, Inc. v. William C. Burkett.

The prejudgment interest award is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A076540--The People v. Michael Gregory Probst.

The order is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A076967--County of Alameda v. Stephen E. Fay

The judgment is affirmed. Strankman, P.J. We concur: Dossee, J., Swager, J. (Not for Publication.)

Tuesday, December 16, 1997 (continued)

A077558--Richard A. Canatella et al. v. United Services Automobile Association.

The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A077827--Fire Insurance Exchange v. Robert Proffit et al.

The judgment is affirmed. Strankman, P.J. We concur: Dossee, J., Swager, J. (Not for Publication.)

A077901--Gregory R. Nevins v. Oakland Raiders et al.

The order is affirmed. Strankman, P.J. We concur:; Dossee, J., Swager, J. (Not for Publication.)

A078579--The People v. Neil James Waters

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION THREE

A074750--The People v. Clyde Tommy Denney.

The judgment is affirmed. The case is remanded to the trial court for resentencing. (*People* v. *Fuhrman*, *supra*, 16 Cal.4th at p. 944; *People* v. *Smith*, *supra*, 59 Cal.App.4th at p.50.) Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

Tuesday, December 16, 1997 (continued)

DIVISION FOUR

A077268--The People v. Sergio Emilio Quinones.

The judgment is affirmed. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A078008--Elizabeth Shaughnessy, Individually and as Conservator, etc. v. National Benevolent Association of the Christian Church (Disciples of Christ) et al.

We reverse the judgment of costs and remand with directions to (1) allocate deposition and mediation costs in accordance with this opinion, and (2) delete the item for models, blowups and photocopies of exhibits. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

A078451--The People v. Victoria Purnell.

Judgment affirmed. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

DIVISION FIVE

A077325--In re the Marriage of Judith and Frank George.

The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J. (Not for Publication.)

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

DIVISION FOUR

Tuesday, December 16, 1997

Court convened at 9:30 a.m. in its courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California. Present: Hanlon, P.J., Poche, J. and Saldamando, Judge (by assignment from the superior court); Channing Hoo, Deputy Clerk; CHP Officer E. Swanson, Baliff.

A079455 Linda Caswell et al.

V.

Bruce Pratt et al.

Cause called and argued by Kent Russell, counsel for appellant Caswell; by in pro per appellant Dennis Tejada (through telecon); and by Nils Rosenquest, counsel for respondents. Cause ordered submitted.

A076950 People

v.

David A. Renner

Cause called and argued by Charles Kirk, counsel for appellant People, and by Charles Marson, counsel for respondent. Cause ordered submitted.

For the following cases this morning, the court reconstituted itself to include Hanlon, P.J., Poche, J. and Reardon, J.

A075048 City of Vacaville et al.

v.

Kennedy, Jenks, Chilton et al.

Cause called and argued by Ronald L. Briggs, counsel for appellants City et al., and by Douglas Brown, counsel for respondents. Cause ordered submitted.

A077268 People

v.

Sergio Emilio Quinones

Appellant waived oral argument before the hearing.

A077750 Judy A. McPherson

v.

Raymond C. Gilmore

Cause called and argued by Kenneth J. Sperandio, Jr., counsel for appellant McPherson, and by David Otsuka, counsel for respondent.

Cause ordered submitted.

A073455 Roberta Carcione et al.

A074525 v.

California State Automobile Association et al.

Causes called and argued by Tony Tanke, counsel for appellants Carcione

et al., and by Randolph S. Hicks, counsel for respondents. Causes

ordered submitted.

A069553 Richard A. Canatella

v.

Louise H. Renne et al.

Cause called and argued by Albert E. Levy, counsel for appellant Canatella, and by Karl Olson and Clarke Holland, counsel for

respondents. Cause ordered submitted.

The court recessed at 11:46 a.m.

Courtroom Minutes Division 4 Tuesday December 16, 1997

Court reconvened at 2:00 p.m. in its courtroom at 303-2nd Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Poche, J. and Reardon, J., Jim Campbell, Deputy Clerk and CHP Officer E. Sherry, Bailiff.

A070809 Bruce Springmeyer, et al.

v.

Ford Motor Co., et al.

Cause called. Frank Kelly, Michael O'Leary and James Heisey argued on behalf of appellant Ford Motor Co., et al. Philip Weltin argued on behalf of respondent. Cause submitted.

A077993 Chandler J. Lai, et al.

v.

City of Piedmont

Cause called. M. Leader-Picone argued on behalf of appellants Lai, et al. John DePasquale argued on behalf of respondent. Cause submitted.

A077190 Geoffrey Murihia

v.

Berkeley Unified School District

Cause called. Alfred Buchta argued on behalf of appellant Murihia. Robert Curotto argued on behalf of respondent. Cause submitted.

A077554 Frank J. Farrell, M.D.

v.

James Ostroff, M.D., et al

Cause called. Patrick Richard argued on behalf of appellant Farrell. Vincent McLorg argued on behalf of respondents. Cause submitted.

A078153 Pinole Medical Group, Inc.

v.

Alta Bates Health Systems, et al.

Cause called. Robert Andris argued on behalf of appellants Alta Bates, et al. Diane Palumbo argued on behalf of respondent. Cause submitted.

A077327 People

v.

Vincent Barnes

Cause called. Brian Hong argued on behalf of appellant Barnes. Eric Share argued on behalf of respondent. Cause submitted.

A076120 Andrew J. Peter

v.

City and County of San Francisco Cause called. Steven Schroeder argued on behalf of appellant Peter. Lisa Berkowitz argued on behalf of respondent. Cause submitted.

The Court adjourned at 4:40 p.m.

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

Wednesday, December 17, 1997

DIVISION ONE

A077362--In re Raymond C., a Person Coming Under the Juvenile Court Law.

Accordingly, the judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A077950--Anthony T. Johnson v. San Francisco Bay Area Rapid Transit District.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Dossee, J. (Not for Publication.)

DIVISION TWO

A075983--The People v. Tiquon Ramon Hicks.

The judgment is affirmed. Ruvolo, J. We concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A077715--First American Title Insurance Company et al. v. Johnny Crowell.

The judgment of the trial court is affirmed. Ruvolo, J. We concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Wednesday, December 17, 1997 (continued)

A080927--Harry's Hofbrau Catering, Inc., et al. v. The Superior Court of San Mateo County, Mario Raddavero, et al., R.P.I.

By The Court: The petition for writ of supersedeas/stay is denied. Haerle, Acting P.J.

A080975--In re Muharem Kurbegovich, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Haerle, Acting P.J.

DIVISION THREE

A079985--Beverly Chew et al. v. The Superior Court of Alameda County, Floyd Koch et al., R.P.I.

Let a peremptory writ of mandate issue, directing respondent court to vacate its order denying petitioners' challenge to Judge Dunbar and to grant the motion, and to assign a different judge. Phelan, P.J. We concur: Corrigan, J., Walker, J. (Not for Publication.)

DIVISION FOUR

A069553--Richard Canatella v. Louise Renne et al.

The judgment is affirmed. Defendants shall recover their costs. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A077993--Chandler J. Lai et al. v. City of Piedmont.

The judgment is affirmed. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

Wednesday, December 17, 1997 (continued)

A079038--The People v. David Issac Trystman.

The judgment is affirmed. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

DIVISION FIVE

A076215--The People v. Antonio Olvias Renteria.

The judgment is affirmed. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

A077455--Stephen Yee, et al. v. Berkshire Venture Partners, Ltd.

Appellant is not entitled to arbitration of the first seven causes of action alleged in the Yees' complaint in Action No. 982081. However, appellant is entitled to arbitration of the eighth through thirteenth causes of action alleged in the Yees' complaint in Action No. 982081. The judgment is affirmed in part, reversed in part, and the matter is remanded to the trial court for further proceedings in accordance with the views expressed in this opinion. Jones, J. We concur: Peterson, P.J., Haning, J. (Not for Publication.)

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

DIVISION FIVE

Wednesday, December 17, 1997

Court convened at 9:30 a.m. in its Courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California. Present: Peterson, P.J.; Haning, J.; Jones, J.; Corrigan, J, sitting on assignment; and Richard H. Sandvik, Deputy Clerk.

Justice Peterson called the first cause and announced the recusal of Justice Jones and the assignment of Justice Corrigan, for the first cause on calendar, A073945, People v. Dino Loren Smith and Troy Devin Smith.

Justice Corrigan on sitting on assignment.

A073945 The People

v.

Dino Loren Smith and Troy Devin Smith

Cause called and argued by Janice Lagerlof and Paul Couenhoven, counsel for appellants, and by Herbert F. Wilkinson, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A077834 Raymond Dobard

v.

Country of Alameda et al.

Cause called, appellant Raymond Dobard, in pro per, did not appear, Denis Kenny and Andrew McEneaney, counsel for respondent, no argument. Cause ordered submitted.

A075554 Middletown Rancheria of Pomo Indians

v.

Worker's Compensation Appeals Board and

Glen Sherron

Cause called and argued by Anthony Cohen, counsel for petitioner, and by James R. Kneisler, counsel for respondent. Cause ordered submitted.

A077704 Steve Aronovsky

v.

Jay N. Nguyen et al.

Cause called and argued by Steve Aronovsky, appellant in pro per, and by Peter Bothel, counsel for respondent. Cause ordered submitted.

A076098 Neal J. Schon

v.

Sam Conti

Cause called and argued by Donald J. Putterman, counsel for appellant, and by Richard S. E. Johns, counsel for respondent. Cause ordered submitted.

A077882 Wale O. Osijo

v.

Ganong and Michell et al.

Cause called and argued by Wale O. Osijo, appellant in pro per, and by Antoinette W. Farrell, counsel for respondent. Cause ordered submitted.

A077879 Westhaven Community Development Council

v.

County of Humboldt et al.

Cause called and argued by Nancy Diamond, counsel for appellant, and by Chris Hamer and Ginerva Chandler, counsel for respondent. Cause ordered submitted.

A078611 Dataexpert Corporation et al.

v.

Chubb & Son, Inc. et al.

Cause called and argued by Arthur Schwartz, counsel for appellant, and by Steve F. Rebagliati, counsel for respondent. Cause ordered submitted.

A077425 The People

v.

Benjamin Aaron Pilarczyk

Cause called and argued by J. Frank McCabe, counsel for appellant, and by Linda M. Murphy, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A077520 The People

v.

Ernesto Nucum Bucasas

Argument waived. Cause ordered submitted.

A077515 The People

v.

Rodney Lee Bechler

Cause called and argued by Nella Bertin, counsel for appellant, and by Morris Beatus, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A076384 The People

v.

Lawrence Michael McNay

Argument waive. Cause ordered submitted.

A079042 In re Louis Randolph Jenkins on Habeas Corpus.

A074789 The People

v.

Louis Randolph Jenkins

Cause called and argued by Eric Liberman, counsel for appellant, and by Raymond Cardozo, Deputy Attorney General, counsel for respondent.

Cause ordered submitted.

A079205 In re Jason McCord Patten on Habeas Corpus.

A077108 The People

v.

Jason McCord Patten

Cause called and argued by Richard Day, counsel for appellant, and by Stan M. Helfman, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court adjourned at 2:05 p.m.

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

Thursday, December 18, 1997

DIVISION ONE

A076002--Lenore Titus v. Drake Builders, Inc., et al.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Dossee, J. (Not for Publication.)

A077534--In re Willie Joyce H., a Person Coming Under the Juvenile Court Law.

The order continuing appellant as a ward of the court and committing him to CYA is affirmed. Strankman, P.J. We concur: Stein, J., Dossee, J. (Not for Publication.)

A079620--The People v. Jeanette Elaine Calkins

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A075147/A077391--B-X Ranch, Inc. v. Ray Bartolomei, et al.

The judgment and amendment to the judgment are both affirmed. Haerle, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Thursday, December 18, 1997 (continued)

A076480--Linda Mallette, Trustee of the Shirley Gail Payne 1988 Trust v. Susan Schumacher, et al.

We reverse the judgment dismissing the Trust's complaint against Grubb & Ellis. Costs on appeal are awarded to appellant. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A080380--In re Kenneth Jackson, on Habeas Corpus.

By The Court: The above entitled appeal is transferred from Division Five to Division Two of this Court. This order is made pursuant to California Rules of Court, rule 20 (b) (1). Strankman, A.P.J.

DIVISION THREE

A071895--The People v. John Raymond Arias.

The judgment is reversed. Corrigan, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

DIVISION FOUR

A074440--The People v. Carl Wayne Anderson

The judgment is affirmed. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

A075048--City of Vacaville v. Kennedy/Jenks/Chilton et al., James Davey.

The judgment of nonsuit on the product liability-negligence cause of action against KJC and Kaweah is reversed. In all other respects, the judgment is affirmed. Parties to bear their own costs on appeal. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

A077498--Kenneth J. Corcoran v. Contra Costa County Employees Retirement Board et al.

By The Court: The requests to publish this court's November 24, 1997 opinion is granted and said opinion shall be published in the Official Reports. Hanlon, P.J.

A077750--Judy A. McPherson v. Raymond C. Gilmore.

The summary judgment is reversed and the cause is remanded with directions to (1) vacate the order granting summary judgment, (2) enter a new order granting summary adjudication in favor of Gilmore on the first cause of action, the second cause of action only insofar as it alleges wrongful termination based on sexual harassment, and the third cause of action, and (3) and to conduct further proceedings consistent with the views expressed herein. Each party to bear its costs on appeal. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

DIVISION FIVE

A076476/A076796--Cynthia Snyder v. Thomas J. Martin and Ronald Anderson.

The Court: The denial of the motion for relief from default is affirmed. Before Peterson, P.J.; Haning, J.; Jones, J. (Not for Publication.)

A077118--The People v. William Wesley Perry.

The judgment is affirmed. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

A077736--Darrell Keating et al. v. Mock Wahlund et al.

The judgment is reversed. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

DIVISION THREE

Thursday, December 18, 1997

Court convened at 9:00 a.m. in its Courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California.

Present: Phelan P.J., Corrigan J., Parrilli J., Walker, J., and C. Turner, Deputy Clerk

Justice Phelan announced that Justice Corrigan would not be participating on the following case.

A073705 The People,

v.

Franz Roland Ray,

Cause called and argued by Janice Brickley, counsel for appellants, and Deputy Attorney General, Laurence K. Sullivan, counsel for respondent. Cause ordered submitted.

A078225 In re Franz Roland Ray on Habeas Corpus

Cause ordered submitted.

Justice Phelan announced he was not participating on the following case.

A073083 In re Casey Wayne F., a person coming under Juvenile Court Law

The People,

v.

Casey Wayne F.

Cause called and argued by Randy Baker, counsel for appellant, and Deputy Attorney General, Ross Moody, counsel for respondent. Cause ordered submitted.

A078163 In re Casey F., on Habeas Corpus

Cause ordered submitted.

Justice Parrilli left the bench.

A079442 Linda J. Szyniszewski,

v.

Marilyn E. Minger,

Cause called and argued by Bernard Wolf, counsel for appellant, and Carol Amyx, counsel for respondent. Cause ordered submitted.

A076816 The People,

v.

Michael Phillip Jack,

Cause called and argued by Randi Covin, Counsel for appellant, and Deputy Attorney General, Christopher J. Wei, counsel for respondent argued via teleconference. Cause ordered submitted.

Court adjourned

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

Friday, December 19, 1997

DIVISION ONE

A075417--In re Maria S., a Person Coming Under the Juvenile Court Law.

The order is affirmed. Stein, J. We concur: Strankman, P.J., Dossee, J. (Not for Publication.)

DIVISION TWO

A076593--Arthur Mitchell v. Asbestos Corporation, Ltd.

The Court: Respondent's petition for rehearing filed on December 2, 1997 is granted. Kline, P.J.

A077482/A077490--City and County of San Francisco v. Frankie R. Dow.

The orders are affirmed. Ruvolo, J. We concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A079003--The People v. Dorian Redus.

The judgment is affirmed. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Friday, December 19, 1997 (continued)

A080950--In re Floyd V. Rogan, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Haerle, Acting P.J.

A081002--Jirayir Senocak, et al. v. Alcoholic Beverage Control Appeals Board.

By The Court: The petition for writ of review/stay is denied. Haerle, Acting P.J.

DIVISION THREE

A075538--California Custom Cabinetry v. Shames Construction Company, Ltd.

The trial court did not abuse its discretion when it granted Shames's motion for reconsideration. Moreover, the trial court was not bound by the arbitrator's prior determination that Custom Cabinetry was properly licensed and that the agreement with Shames was therefore legal. Rather, the trial court was required to review the licensing and legality issues de novo. The order denying Custom Cabinetry's petition to confirm the arbitration award on the grounds that Custom Cabinetry was not licensed and therefore, under Business and Professions Code section 7031, could not recover for the work performed on the Stonestown Galleria project was supported by substantial evidence. We therefore affirm. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A073455

A074525--Roberta Carcione, Hugh F. Mullin, IV, as Co-Executors, etc. et al. v. California State Automobile Association et al.

The judgment is affirmed. The order denying appellants' motion to tax costs is affirmed. CSAA shall recover its costs on appeal. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

Friday, December 19, 1997 (continued)

A076120--Andrew J. Peter v. City and County of San Francisco et al.

The judgment is affirmed. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A077190--Geoffrey Murihia v. Berkeley Unified School District.

The trial court properly granted summary judgment to BUSD. The judgment is affirmed. BUSD shall recover its costs on appeal. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A077327--The People v. Vincent Barnes.

The judgment is affirmed. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A078175--The People v. Elaine Mason.

The judgment is affirmed. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A079119--The People v. Robert Spikes.

The judgment is affirmed. Hanlon, P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

A079461--The People v. Gloria Julian Wolfe.

The order of probation is affirmed. Poché, Acting P.J. We concur: Reardon, J, McGuiness, J. (Not for Publication.)

Friday, December 19, 1997 (continued)

DIVISION FIVE

A073292--Kay Delaney v. Calvin Baker, Sr., et al.

By The Court: It is ordered that the opinion filed herein on November 26, 1997, be modified as follows: (See order) This order does not effect a change in the judgment. Peterson, P.J. (Certified for Partial Publication.)

A078498--In re the Matter of Elizabeth B., a Minor.

The order terminating parental rights is affirmed. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

Monday, December 22, 1997

DIVISION ONE

A075839--The People v. Anthony S. Martinez.

The judgment appealed from is affirmed. Dossee, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A077462--In re Stephen W., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Dossee, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A078053--The People v. Raymond Lawrence Frazier.

The order denying the motion to reinstate the complaint is affirmed. Dossee, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A078475--The People v. Jose Gabriel Ortiz.

The judgment is affirmed. Dossee, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

Monday, December 22, 1997 (continued)

A079813--Thompson/Eureka Times Standard et al. v. Workers' Compensation Appeals Board and Katherina Sue Bagley.

The Court: The petition for writ of review is denied. We find no reasonable basis for the petition. (Lab. Code, § 5801.) Accordingly, respondent Katherina Sue Bagley's request that the matter be remanded to the Board for supplemental award of a reasonable attorney's fee is granted. (Lab. Code, § 5811; *Johnson* v. *Workers' Comp. Appeals Bd.* (1984) 37 Cal.3d 235, 242.) Strankman, P.J.

DIVISION TWO

A075629--The People v. Ivory L. Gray.

The judgment is affirmed. Kline, P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A076610--The People v. Gerald Manley James.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

DIVISION THREE

A076816--The People v. Michael P. Jack.

We find that appellant was denied due process by the CDC's failure to provide him with a copy of the written record of the BPT's determination to retain him on parole. This denial did not operate to invalidate the determination of continued parole, but appellant is entitled to an opportunity to appeal the determination. Accordingly, we remand and direct the trial court to modify its ruling to the CDC by ordering it to transmit to appellant a copy of the written parole retention record so that he may have the opportunity to pursue his right of appeal. Walker, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

Monday, December 22, 1997 (continued)

A077061--The People v. Kelvin M. Stiles.

The superior court is directed to issue an amended abstract of judgment. Defendant is to be awarded 223 days of actual credit and 110 days of conduct credit for the period of time concluding with his initial sentencing on November 27, 1995. He is then to be awarded an additional 392 days of actual custody credit for the period of time concluding with his resentencing on December 23, 1996. In all other respects, the judgment is affirmed. Corrigan, Act. P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A078900--The People v. Vanny Joya Cazzally.

The judgment is affirmed. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

A079442--Marilyn E. Minger v. Linda J. Szyniszewski.

The judgment of the trial court is affirmed. Respondent is awarded her costs on appeal. Walker J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

DIVISION FOUR

A076589--Rachel Skiffer et al. v. Joseph Skiffer.

The purported cross-appeal is dismissed as untimely. The judgment is affirmed and the request for sanctions is denied. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

A077209--In re Adam J., a Person Coming Under the Juvenile Court Law.

The dispositional order is affirmed. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

Tuesday, December 23, 1997

DIVISION ONE

A074843--The People v. Victor Gillispie.

The judgment is modified to delete the sentence enhancements for counts one and two under Penal Code section 12022, subdivision (a), consisting of two 4-month terms. In other respects, the judgment is affirmed. Swager, J. We concur: Stein, Acting P.J., Dossee, J. (Certified for Partial Publication.)

A075849--Averell Smith et al. v. Regents of the University of California et al.

The order awarding attorney's fees is reversed in part, and the matter is remanded to the trial court for reconsideration of the award to Arlo Hale Smith for the period from July 13, 1988, to November 2, 1993. The order is also modified to make the award of \$3,750 for time spent by Tim De Witt payable directly to Arlo Hale Smith. In all other respects, the order is affirmed. Each side shall bear its own costs on appeal. Dossee, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A077821--Anita L. Crockett v. Cupertino National Bank & Trust.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Dossee, J. (Not for Publication.)

A077934--In re Sierra Nicole B. and Stephani Leann P., Persons Coming Under the Juvenile Court Law.

The order is affirmed. Stein, Acting P.J. We concur: Dossee, J., Swager, J. (Not for Publication.)

DIVISION TWO

A078749--Orange Pierson v. Sharon Babb-Free, as Administrator, etc., et al., Rochelle Anderson.

The judgment is affirmed. Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Certified for Publication.)

DIVISION THREE

A068692--Department of Industrial Relations, Division of Labor Standards Enforcement v. Fidelity Roof Company et al.

A069047--Department of Industrial Relations, Division of Labor Standards Enforcement v. Fidelity Roof Company, Indiana Lumbermens Mutual Insurance Company.

DLSE's complaint against fidelity was barred by the statute of limitations. Consequently, we reverse that portion of the judgment in favor of DLSE and direct the superior court to enter judgment in favor of Fidelity. DLSE's complaint against Lumbermens was timely. Given that the trial court awarded only unpaid wages, DLSE could properly recover that amount from Lumbermens on behalf of the workers. The prevailing wage law was properly applied here and is not otherwise preempted by ERISA. Consequently, we reverse that portion of the judgment in favor of Lumbermens and direct the superior court to enter judgment in favor of DLSE as against Lumbermens. Each party is to bear its own costs on appeal. Corrigan, J. We concur: Strankman, Act. P.J.*, Walker, J. *Presiding Justice of the Court of Appeal, First District, Division One, sitting under assignment by the Chairperson of the Judicial Council. (Certified for Partial Publication.)

A073361--Jordan, Lawrence & Martin v. W. Wong Construction, Inc., et al.

For all the foregoing reasons, the judgment of the trial court is reversed and the cause remanded for further proceedings consistent with this opinion. Costs to appellant. Phelan, P.J. We concur: Corrigan, J., Walker, J. (Not for Publication.)

A074656--The People v. John E. Yi.

The judgment is affirmed. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A075777--Trans-Action Commercial Investors, Ltd., et al. v. Donald A. Jelinek.

The sanctions order is reversed. The parties shall bear their own costs on appeal. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Certified for Publication.)

A077493--In re the Marriage of Luann Joy and Edward Early Headrick.

Affirmed. Costs are awarded to the respondent. Walker, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

A078450--The People v. Jose Merpardo Aparicio.

The judgment is affirmed. Corrigan, Act. P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A079985--Beverly Chew et al. v. The Superior Court of Alameda County, Floyd Koch et al., R.P.I.

Order Modifying Opinion; By The Court: It is ordered that the opinion filed herein on December 17, 1997, be modified as follows: (See Order) This modification does not effect a change in the judgment. Corrigan, Acting P.J. (Not for Publication.)

Tuesday, December 23, 1997 (continued)

A080324--James H. v. The Superior Court of Solano County, Solano County Health & Social Services Department.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd.* v. *Superior Court* (1990) 50 Cal.3d 1012, 1024.) The section 366.26 hearing is set for January 20, 1998. Therefore, our decision is final in this court immediately. Walker, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

DIVISION FOUR

A077840--In re Tonieka B., a Person Coming Under the Juvenile Court Law.

The termination order is affirmed. Reardon, J. We concur: Hanlon, P.J., McGuiness, J. (Not for Publication.)

A077937--In re Vertral J., a Person Coming Under the Juvenile Court Law.

The judgment is ordered corrected to reflect a maximum period of confinement as 10 years. In all other respects, the judgment is affirmed. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

A078281--John Roe v. United Services Automobile Association.

We affirm the judgment. Reardon, Acting P.J. We concur: McGuiness, J., Haning, J.*

*Associate Justice of the Court of Appeal, First District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

Tuesday, December 23, 1997 (continued)

DIVISION FIVE

A075911/A076828--Greg Keith v. Department of Fish and Game.

The appeal from the underlying judgment is dismissed. The order awarding fees and costs is affirmed. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

A078199--Chris B. Rickrode v. Utica Mutual Insurance Company.

We remand the matter to the trial court for a hearing to determine the amount of sanctions to be imposed. The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J. (Not for Publication.)

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

Wednesday, December 24, 1997

DIVISION TWO

A081067--In re Manuel A. Wagan, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Haerle, Acting P.J.

DIVISION THREE

A078530--Charles Quackenbush, as Insurance Commissioner, etc., et al. v. The Superior Court of San Francisco County, Congress of California Seniors et al., R.P.I.

We have concluded that the superior court's reasons for enjoining expending money to implement Proposition 213 were legally incorrect. Anomalies in the treatment of persons in the three classes of disfavored motorists do not render the legislation invalid. We have also rejected CCS's other challenges to prospective operation of the measure. We have determined that a retroactivity challenge must be made in a case where retroactive application is actually threatened. It follows that the superior court erred in issuing its injunction and in overruling Quackenbush's demurrer.

Let a peremptory writ of mandate issue compelling the San Francisco County Superior Court to vacate its injunction and its order overruling Quackenbush's demurrer and to enter a new order sustaining the demurrer without leave to amend. Costs in this proceeding are awarded to Quackenbush. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Certified for Publication.)

Wednesday, December 24, 1997 (continued)

DIVISION FIVE

A078554--The People v. William George Gow.

The judgment of conviction is affirmed. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

A080421--Mark Y. v. Superior Court of Contra Costa County, Contra Costa County Social Service Department, R.P.I.

The Court: The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis* v. *Howard* (1992) 3 Cal.4th 888.) Petitioner is barred in any subsequent appeal from making further challenges to the order terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (*l*).) Since the section 366.26 hearing is set for January 26, 1998, this opinion is final as to this court forthwith. (See Cal. Rules of Court, rule 24(d).) Before Peterson, P.J.; Haning, J.; Jones, J. (Not for Publication.)